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From:

Sent: Wednesday December 21, 2011 2:07 PM

To:

Cc:

Subject: RE: Advice on correction of prohibited transaction

Sorry for the delay in getting back to you.

To determine "correction" in this case, we first have to determine what the prohibited transactions ("PTs") were. Whether there was a PT when the plan purchased the interest in the two limited partnerships or was it when the limited partnership paid the taxpayer the \$ _____ in compensation. Attached are two Department of Labor ("DOL") Advisory Opinions, (DOL Advisory Opinion 2006-01A (January 6, 2006) and DOL Advisory Opinion 2000-10A (July 27, 2000) that would indicate that there maybe was a PT (1)at the time the plan purchased its interest in the limited partnerships, if the limited partnerships were disqualified persons at the time of the sale (see section 4975(e)(2)(G)) and/or(2) a PT at the time the limited partnerships paid compensation to the taxpayer.

Section 4975(f)(5) and Treas. Reg. section 53.4941(e)-1(c)(1); Temp. Treas. Reg. section 141.4975-13 provides that the term "correction" and "correct" mean, with respect to a prohibited transaction, undoing the transaction to the extent possible, but in any case placing the plan in a financial position not worse than that in which it would be if the disqualified person were acting with the highest fiduciary standards.

I have also attached Zabolotny v. Commissioner, 7 F.3d 774 (8th Cir. 1993) that addressed what is correction. However, see the attached AOD on Zabolotny that expresses the Service's position on correction and that the Service will not follow the decision of the Eighth Circuit except in that Circuit. It is the Service's view that a prohibited transaction involving a disqualified person's transfer of property to a qualified plan cannot self-correct. Treas. Reg. § 53.4941(e)-1(c)(1); Temp. Reg. § 141.4975-13. As long as rescission is possible, e.g., there has been no transfer to a bona fide purchaser for value, some affirmative act to undo the prohibited transaction is required. Leib v. Commissioner, 88 T.C. 1474, 1483 (1987); Zabolotny v. Commissioner, 97 T.C. 385, 399 (1991).

Give me a call at _____ so that I can walk you through what I think are the possible PTS in this case and discuss correction.